IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2035 of 2001

to

FIRST APPEALNo 2087 of 2001

with

FIRST APPEAL No 1471 to 1492 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SPECIAL LAND ACQUISITION OFFICER

Versus

ISHWARBHAI BAKORBHAI DECD. BY HEIRS ASHOK ISHWARBHAI

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Appearance:

1. First Appeal No. 2035 to 2070 of 2001
   Mr AD OZA, GP, for the appelants.
   MR AJ Patel for Respondents
2. First Appeal No. 2071 to 2087 of 2001
   Mr Mukesh Patel for the appellants

MR AJ PATEL for Respondents.

3. First Appeal No.1471 to 1492 fo 2001

Mr AD OZA, GP for the appellants.

Mr AJ Patel for the respondents.

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CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

What should be the market price so as to award just and reasonable amount of compensation to the respondents-original claimants, whose lands have been acquired, is the main question, which has come up for consideration and adjudication in this two groups of appeals, under section 54 of the Land Acquisition Act, 1894 (Act, for short). Since this group emerges out of common judgment and raises identical questions, upon consensus, we propose to discuss and decide, simultaneously, by this common judgment.

A conspectus of facts, relevant and material for the purpose of deciding the main issue, needs narration, at the outset.

In the first group of appeals, the Executive Engineer, Narmada Project, Main Canal, Construction Division, 11, Ahmedabad proposed to the Government for the acquisition of the lands in question, as a result of which, a notification under section 4(1) of the Act, dated 13.12.85 and followed by notification under section 6(1), dated 2.4.87, came to be issued. The Special Land Acquisition Officer, by his award dated 21.4.89 awarded compensation to the claimants at the rate of Rs.4 per sq. mtr.

The respondents, original-claimants, decided to challenge the award of the Land Acquisition Officer and, therefore, they made, applications for reference under section 18(1) of the Act, claiming an amount of Rs.100 per sq. mtr for the acquired lands. That is how, the District Court, at Ahmedabad Rural was called upon to determine and adjudicate upon the references.

The reference Court, after considering the facts and

circumstances and the evidence, upwardly, revised the market price fixed by the Land Acquisition Officer from Rs.4 per sq. mtr. to Rs.69/- per sq. mtr. by way of compensation for the acquired lands, over and above the statutory benefits, by its award dated 31.1.2000. The appellant, State of Gujarat, decided to assail the award of the reference Court and which culminated into this batch of appeals, under section 54 of the Act.

During the course of marathon submissions before us, we were taken through the entire testimonial as well as oral evidence led before the reference Court. We have, also, been, addressed on the question of relevant law. We have, also, examined the entire record, threadbare. We have, also, examined the case law relied on by the parties, in this group of appeals.

Following aspects have emerged unquestionably, from the record of the present case:

(1) That in all the references and resultant appeals before us, the acquisition of land is of agricultural land, for the purpose of construction of Narmada Project main canal.

(2) All parcels of lands under references are situated in village Adalaj in Gandhinagar district.

(3) Notification under section 4(1) of the Act is dated 13.12.85.

(4) The Land Acquisition Officer fixed market price of the lands at the rate of Rs.4 per sq. mtr. by his award dated 21.4.89, against the claim of Rs.100 per sq. mtr. made by the claimants.

(5) The references came to be decided by the District Court, Ahmedabad Rural, under section 18 and by a common judgment, the District Court enhanced the market price fixed by the Land Acquisition Officer from Rs.4 to Rs.69 per sq. mtr.

With a view to have the factual profile properly stated and articulated, we propose to highlight them in a tabular form, which would, at a glance, indicate the land reference case number, application number and area and extent of land acquired for the aforesaid purpose.

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Sr.No. L.A. Case No. Block No. Area in sq. mt.

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 1. 358/91  1113  11240
 2. 174/90  1418   5291
 3. 175/90  1418  10421
 4. 176/90  1402   4654
 5. 177/90  1400  15277
 6. 178/90  1415
    1416   8600
 7. 179/90  1413
    1429   4941
 8. 180/90  1431/A  21090
 9. 181/90  1406   6677
    1420   1052
10. 182/90  1410    352
11. 183/90  1422  11432
12. 184/90  1404   9409
13. 185/90  1407   5868
14. 186/90  1399   5538
15. 187/90  1421   8195
    1405   2226
16. 188/90  1458   4553
17. 189/90  1466  10779
18. 190/90   101   4148
19. 191/90  1459   2833
20. 192/90   769   1505
21. 193/90  1464  19197
22. 194/90  1457   2023
23. 195/90  1444  27877
    1453     16
24. 196/90   725   8040
25. 197/90  1445   2496
26. 198/90  1461   4856
27. 199/90    60  12967
28. 200/90   102  14134
29. 359/91  1128  14679
30. 360/91  1121  24160
31. 361/91  1111  10522
32. 363/91  1115   4047
33. 653/91  1114  16289
34. 654/91  1120  18284
35. 655/91  1127  11937
36. 656/91  1106    256
37. 657/91  1110  12800
38. 658/91  1118   1616
39. 660/91  1109   1200
40. 661/91  1108    112
41. 662/91  1468  12647
42. 663/91  1105  16400
43. 664/91  1116  22966
44. 665/91  1133   4328
45. 531/91  1463  15985
46. 532/91  1465   5925

47. 533/91 1460 2630
48. 534/91 1455 2226
49. 535/91 1462 11820
50. 536/91 1456 1066
51. 537/91 150 1495
52. 538/91 1397 12950
53. 1354/96 1119 240

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The appellants, during the course of reference before the District Court had filed written statement at Ex.12. Ex. 22 to 39 are the copies of village form No.7/12. Ex.41 is the copy of the judgment in land reference case No.349/89 by the reference Court. Ex.43 is the copy of the judgment. Ex.44 is the copy of the valuation report. Ex.45 and 46 are copies of price list of the department, for the purpose of stamp duty. Ex.150 is the certified copy of the judgment in land acquisition case No.22/93 which became final, upon being decided by the Division Bench of this Court in group of appeals in First Appeal No.4497/99 with First Appeal No.7289 to 7297 of 1999, on 4.5.2001. The parties have led oral evidence also, to which reference will be made by us, as and when required, at an appropriate stage, hereinafter.

In so far as the merits and challenge against the appeals, in this group are concerned, we have been addressed elaborately. The main submission advanced on behalf of the appellants has been that the amount of compensation or fixity of market price at the rate of Rs.69 per sq. mtr. fixed by the reference court is unsupportable and, therefore, it is required to be reduced, whereas, while questioning this submission, it was submitted on behalf of the respondents that, original claimants, owners of the land covered under the reference that the market price, for the purpose of compensation determined by the reference Court is on conservative side and since no cross objections are filed, at least the amount awarded by the reference Court ought to be affirmed and confirmed while dismissing this group of appeals.

LEGAL PROPOSITION:

The underlying design and desideratum of the Act is to empower the Government to acquire lands on payment of just and reasonable amount of compensation. The basic principles are, time and again, highlighted. The right of eminent domain is the right of the State through its regular organisation to reassert either temporarily or permanently, its dominion over any portion of the soil of

the State on account of public good, public policy or public exigency. It cannot be gainsaid that there is a policy and purpose behind the doctrine of eminent domain and it assumes wider and higher significance in a country which is wedded to democratic welfare State. The doctrine of eminent domain is the highest and most exact idea of property remaining in the Government or in the aggregate body of the people in the sovereign capacity. The principle of eminent domain has been universally and globally accepted and recognized as it advances public cause and public good. No doubt, legislative mechanism and device is provided for payment of compensation which should be just and reasonable, in the facts and circumstances of the case, for the purpose of exercising the powers empowered under the doctrine of eminent domain. The statutory prescription and module or provision has been made before acquisition of private lands, for the public good.

In this group of matters filed by the State of Gujarat, pursuant to the proposal mooted by the Executive Engineer, Narmada Project, Main Canal Construction Division No.11, Ahmedabad, the Land Acquisition Officer passed the award on 21.4.89, at the rate of Rs.4 per sq.. mtr. which was not accepted by the respondents-original claimants and therefore, they desired for reference under section 18, as a result of which, references were made to the District Court, Ahmedabad Rural, whereby, the claimants, demanded an amount of Rs.100 per sq. mtr. As stated above, the written statement was filed at Ex.12, whereby, the appellants, original opponents, raised various contentions and supported the amount offered by the Special Land Acquisition Officer in his award. The claimants have relied upon the evidence of one Shri witness Babubhai Adarbhai Patel, at Ex.40. They also placed reliance on the following documentary evidence.

(1) Ex.22 to 39 - Copies of village form No.7/12.
(2) Ex. 41 - Copy of the judgment in L.A.Case No.2/83.
(3) Ex.42 - Copy of the judgment of L.A.Case No.343/89.
(4) Ex.43 - Copy of the judgment in L.A. Case No.309/94.
(5) Ex.44 - Copy of the valuation report.
(6) Ex.45 to 46 - Copies of price list of Department.
(7) Ex.50 to 56 Copies of village Form No.7/12.
(8) Ex.150 - Certified copy of the judgment in LA Case No.22/93.

The appellants herein, opponents, also, relied on the

documentary evidence to which reference will be made by us as and when required, at an appropriate stage.

The reference Court after taking into consideration the evidence of the parties and the documents produced on record and considering the rival submissions, awarded an amount of Rs.69/- per sq. mtr. against the claim of Rs.100 made by the claimants.

In so far as the the second group of appeals is concerned, it consist of First Appeal Nos.1471 to 1492 of 2001. In this group of 22 appeals under section 54 of the Act, notification under section 4(1) of the Act was issued on 1.8.91 followed by the notification under section 6(1) on 27.2.92. The Special Land Acquisition Officer by his award dated 21.7.94 offered and granted an amount of Rs.5.20 ps. and Rs.7.80 paise per sq.. mtr. for agricultural lands, whereas, for non-agricultural land, market price came to be fixed at Rs.30 per sq. mtr.

Being dissatisfied by the award under section 11 of the Act, at the instance of the claimants, references were made to the District Court, Ahmedabad Rural. In this group of matters, the lands are both categories, agriculture as well as non-agriculture. The written statement came to be filed by the original opponent No.1 at Ex.8, whereas, by opponent No.2, at Ex.9. The claimants, in this group of appeals, placed reliance on the evidence of (1) Mr. Pravinbhai Manibhai Patel, Ex.95, (2) Mr.Dineshbhai Chunibhai Patel, Ex.96 and (3) Dipakbhai Motibhai Patel, Ex.102. Written submissions were, also, submitted, at Ex.157.

On behalf of the appellants, following witnesses were examined.

(1) Smt.Pallaviben Ghanshyambhai, Land Acquisition Officer, Ex.149.

(2) Shri J.B.Shelat, Executive Engineer, at Ex.151.

Written submissions were also filed on behalf of appellant No.2, at Ex.159. They, also, placed reliance on following documentary evidence.

(1) Ex.107, Copy of the sale deed of Block No.1134 and block No.1262.

(2) Ex.109 to Ex.112, Ex.114 and Ex.115, copies of Index-II.

(3) Ex.118, copy of the judgment in LAR No.343/89.

(4) Ex.141, Copy of sale deed (Alok Co.Op. Hou. Soc.)

Reference Court, after having taken into consideration all the relevant facts and circumstances and the submissions raised on behalf of the parties, granted market price at the rate of Rs.120 per sq. mtr. in respect of agricultural lands whereas Rs.270 per sq. mtr. was granted for non-agricultural land.

We have heard the learned advocates appearingfor the parties, at marathon length. We have, also, dispassionately, examined the entire record. We are, also, addressed on the relevant propositions and principles of law during the course of hearing. Our attention was, also, invited to a decision of this Court dated 4.5.2001 in First Appeal No.4497/99 with First Appeal No.7297/99, decided by a Division Bench of this Court. In that case, notification under section 4(1) of the Act was issued on 21.12.87, in respect of the agricultural lands situated in village Adalaj, for the purpose of acquisition of land for Narmada Main Canal. Ex.15 is a certified copy of judgment and award passed by the Reference Court In LAR No.22/93, relating to the aforesaid acquisition proceedings. There is no dispute about the fact that it has become final. The amount of compensation has, also, been paid to the respective claimants. In the present group of appeals, the reference Court has, also, considered this award Ex.15 as relevant, reliable and comparable evidence for the purpose of fixity of market price. In that case, notification under section 4(1) of the Act was issued on 21.12.87 followed by notification under section 6(1) of the Act on 5.5.88. The reference Court in the award granted an amount of Rs.85 per sq. mtr. for agricultural land and Rs.195/- per sq. mtr. for non-agricultural land. The assessment and fixity of the market price by the reference Court in that group of references, upon challenge in appeal, came to be confirmed by this Court by its common judgment on 4.5.2001.

It is a settled proposition of law that the sale instances or an award which is comparable is very useful, relevant and material evidence for determining just and reasonable amount of compensation to the owners of the land acquired. The claimants had also placed reliance on other comparable awards and documentary evidence in

support of their claim before the reference Court.

Documentary evidence of award produced, at Ex.41, was relied on by the claimants, which was in respect of Land Acquisition Case No.2/83 by the same reference Court and Ex.42 is a copy of the award of Land Acquisition Case No.343/89 given by the same reference Court. Ex.43 is also a copy of the award in Land Reference Case No.309/94 of the same reference Court. Ex.44 is a copy of the valuation report whereas Ex.45 and 46 are copies of assessment of market price prepared by the Collector of Stamp duty. Documentary evidence, at Ex.22 to 39 and Ex.50 to 66 are the copies of village Form No.7/12, in respect of the lands acquired, whereas, documentary evidence produced, at Ex.150, is a certified copy of the judgment in Land Acquisition Case No.22/93, given by the same reference Court and confirmed by this Court by a Division Bench in First Appeal No.4497 of 1999, decided on 4.5.2001. The reference Court has, also, considered the oral evidence of the parties.

The evidence has, clearly, disclosed that the acquired lands are agricultural lands as well as non-agricultural lands. They are adjoining lands in village Adalaj, which is elaborately shown with different colours in a map which was placed before us, upon consensus, in course of hearing. We have given our anxious thoughts and consideration and upon joint request of the parties, this map is given exhibit number as Ex.A-1. Since both the learned advocates, repeatedly, requested in course of hearing, we have taken the same into consideration, after exhibiting it, in this group of appeals. The lands acquired under these two groups are shown with different colours. The lands of first group consisting of 53 appeals are shown in light-coffee colour with indications and numbers, whereas, second group consisting of 22 appeals, the lands are shown in pink colour at three different placed in the same row. Ex.15, equivalent to Ex.150, award, which is finally decided and in which the amount of compensation has been paid to the land owners, claimants, covering the lands are shown in saffron colour in the said map.

The lands covered by award Ex.15 and part of the lands covered in the second group of appeals are situated very close to National Highway No.8, Sarkhej to Gandhinagar, whereas, the lands covered under first group of appeals are on the extreme left and part of them is in the middle of village Adalaj, as shown in the map. The State highway is, also, crossing through village Adalaj touching the lands covered under the second group of

appeals. Three other roads are, also, crossing village Adalaj which are adjoining to most of the lands covered under first group of appeals and partly to the lands covered under second group of appeals. The map shows the National Highway, State Highway and three other village roads across village Adalaj.

The reference Court has, also, taken into consideration the principles enunciated in various decisions. Bearing in mind the factors statutorily articulated in section 23 of the Act and the oral evidence of claimant Shri Babubhai Adarbhai Patel, at Ex.40, the reference Court has, rightly, observed that the lands acquired are potential lands and following facilities are available.

(1) Petrol pump and sub-division of GEB.

(2) Police Station,

(3) Telephone Exchange of 1000 lines.

(4) Tar road, water-supply with drainage system and other infrastructural facilities.

(5) Cooperative societies, primary schools, post office, and primary health centres.

The acquired lands are agricultural and some of them are non-agricultural. They are adjoining to each other in the same village in proximity. The agricultural lands are fertile and it is clear from the evidence on record that the annual yield per bigha came to Rs.26,000 to Rs.30,000 after deducting expenses. It is very clear that the lands of village Adalaj, Khoraj, Jamiatpura, Zhundal are of similar nature and of equal value. Village Adalaj is geographically very well situated and there is also no dispute about the fact that the capital city of the State is situated very nearby and the High Court is on the Sarkhej-Gandhinagar, National Highway.

The reference Court has, also, taken into consideration the dates of notifications under section 4(1) of the Act in three different groups. Ex.15 (Ex.150 in the first group of matters) is an award confirmed by a Division Bench of this Court and it has become final, about which there is no dispute, is, rightly, relied on by the reference court in the first group of appeals, wherein, 53 appeals are involved. It can, hardly, be disputed that the award which has become final is a comparable, reliable, relevant and material documentary piece of evidence. The difference in the date of notification

under section 4(1) of the Act has, also, been considered by the reference Court. After taking into consideration the material facts and the relevant documentary evidence and the provisions of section 23 and 24 of the Act and the celebrated principles of the aforesaid case law, we are of the opinion that the assessment of the market value determined by the reference Court at Rs.69 per sq. mtr. in first group of appeals involving 53 cases, and Rs.120 per sq. mtr for agricultural land and Rs.270 per sq. mtr. for non-agricultural land in second group of appeals, involving 22 cases could not be said to be, in any way, unjust, unreasonable or in any way, vulnerable, requiring our interference exercising our powers under section 54 of the Act. We, therefore, find both the group of appeals, meritless. Consequently, all the appeals covered under these two groups are dismissed without any order as to costs.

In the first group of matters, notification under section 4(1) of the Act was of 1985 while in second group of matters, the notification under section 4(1) was of 1991. Thereafter, long time has elapsed. Possession has been taken from the respective owners of the lands. The appellants are, therefore, directed to deposit the amount of compensation as per the awards recorded by the reference Court and confirmed by us, within a period of three months after deducting the amount earlier deposited.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)

(vjn)